

1 KATHY BAZOIAN PHELPS (State Bar No. 155564)  
2 *kphelps@diamondmccarthy.com*  
3 DIAMOND MCCARTHY LLP  
4 1999 Avenue of the Stars, Suite 1100  
5 Los Angeles, California 90067-4402  
6 Telephone: (310) 651-2997

7 *Successor Receiver*

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

JOHN V. BIVONA; SADDLE RIVER  
ADVISORS, LLC; SRA  
MANAGEMENT ASSOCIATES,  
LLC; FRANK GREGORY  
MAZZOLA,

Defendants, and

SRA I LLC; SRA II LLC; SRA III  
LLC; FELIX INVESTMENTS, LLC;  
MICHELE J. MAZZOLA; ANNE  
BIVONA; CLEAR SAILING GROUP  
IV LLC; CLEAR SAILING GROUP V  
LLC,

Relief Defendants.

Case No. 3:16-cv-01386-EMC

**JOINT STATUS REPORT**

Hearing Date: October 10, 2019

Time: 10:30 a.m.

Location: Courtroom 5, 17<sup>th</sup> Floor  
450 Golden Gate Ave.  
San Francisco, CA 94102

1 Kathy Bazoian Phelps, the successor receiver herein (the “Receiver”), Plaintiff Securities  
 2 and Exchange Commission (the “SEC” or “Commission”) and interested parties the SRA Investor  
 3 Group (“Investor Group”), and Progresso Ventures, LLC (“Progresso”) jointly submit this Status  
 4 Report in anticipation of the Case Management Conference on October 10, 2019.

5 **I. Status of Distribution Plan**

6 On June 27, 2019, the Court heard and considered the Receiver’s comments to the pending  
 7 competing distribution plans filed by the SEC and the Investor Group, as well as the Receiver’s  
 8 proposed plan of distribution. At the hearing, the Investor Group requested, and the Court and  
 9 Receiver agreed, that the Receiver would obtain a tax opinion regarding certain aspects of the  
 10 Receiver’s proposed tax treatment of the plan.

11 The Receiver and the SEC agree and approve of Miller Kaplan as a proposed tax advisor.  
 12 The SEC also strongly recommended that the Receiver engage securities counsel to advise her with  
 13 respect to securities regulations and complexities arising from the proposed distribution of  
 14 securities to investors under the terms of the plan.

15 The Receiver filed her Motion to (1) Employ Miller Kaplan as Tax Advisors; (2) Employ  
 16 Schinner & Shain as Securities Counsel; and (3) for Instructions (the “Motion”), which is set for  
 17 hearing on October 10, 2019 at 10:30 a.m. The Investor Group filed a Response to the Motion and  
 18 the Receiver has filed a Reply addressing the issues raised in the Response. The SEC’s counsel has  
 19 informed the Receiver that the SEC supports the Motion.

20 The parties hope to obtain a ruling from the Court and instructions on how the Receiver  
 21 should proceed regarding the tax consequences of any distribution plan that is ultimately approved.

22 Additional Comments of the Investor Group:

23 While the Investor Group did ask that the Receiver obtain tax advice with respect to any  
 24 proposed tax treatment of the plan,<sup>1</sup> the Investor Group did not agree to and has not approved of  
 25 \_\_\_\_\_

26 <sup>1</sup> The Investor Group wishes to remind the Court that the Receiver’s proposed plan of distribution  
 27 must follow, as closely as practicable, the distribution plan put forward by the Investor Group. *See*  
 28 *Order Re Proposed Distribution Plans* (Dkt. No. 443) at 10 (“Accordingly, the Court determines  
 that the receivership assets shall be distributed in accordance with Sections E (“Use of cash funds  
 currently held by the Receivership Estate”), F (“Calculation of accrued management fees, back-end  
 fees and share surpluses upon the occurrence of a liquidity event”), and G (“Payment of eligible  
 claims and other administrative expenses upon the occurrence of liquidity events”) of the Investor

1 Miller Kaplan as the proposed tax advisor. The Investor Group respectfully requests that any tax  
 2 advisor to be retained by the Receiver for the purpose of providing her advice regarding the tax  
 3 treatment of the proposed distribution plan consider any and all appropriate avenues of tax  
 4 treatment that (1) adhere as closely as possible to the investment goals of investors and (2) will not  
 5 unduly harm investor interests.

6 Responsive Comments of Receiver:

7 Following the hearing on February 28, 2019 and the Receiver's appointment, the Receiver  
 8 filed Comments (Dkt No. 488) to the Investor Group's proposed plan identified in Footnote 1  
 9 hereof. Those Comments identified a number of issues that made the Investor Group's plan not  
 10 feasible and also highlighted the absence of any consideration to tax consequences of the plan that  
 11 the Investor Group proposed. The Receiver met and conferred with all parties to address the issues  
 12 with the Investor Group's plan so that implementation of the plan could be feasible. As a result, the  
 13 Receiver proposed a plan (Dkt No. 487) that all parties, including the Investor Group, largely  
 14 supported, with the understanding that a tax opinion needed to be obtained regarding the Receiver's  
 15 proposed tax treatment. The Receiver filed the Motion set for hearing concurrently herewith to  
 16 bring to the Court's attention the complexities of the tax issues so that the Court can address the  
 17 costs, risks, delays and other considerations in the Court's ongoing efforts to determine what type  
 18 of plan is feasible, reasonable and fair in this case. No such determination has yet been made.

19 **II. Status of Settlement Discussions with Equity Acquisition Corporation and Ben**  
 20 **Sabrin**

21 Since the Receiver's appointment on February 28, 2019, she has been in discussions with  
 22 EAC regarding resolution of all outstanding issues as between EAC and the estate. The Receiver  
 23 has recently reached a tentative settlement structure with EAC and the parties are in the process of  
 24 resolving certain share exchange numbers and documenting the settlement, which shall be subject  
 25 to Court approval.

26 The Receiver initially communicated with Ben Sabrin regarding shares of MongoDB that

27 \_\_\_\_\_  
 (continued)

28 Plan.”)

1 are owed to the estate following her appointment and they discussed resolution of the claim against  
2 him. Mr. Sabrin has ceased communicating with the Receiver, and the Receiver is in the process of  
3 preparing a complaint to be filed against Mr. Sabrin.

### 4 **III. Claims Administration**

5 The second and final claims bar date in this case was May 14, 2019. The Receiver has not  
6 received any late filed claims after that date.

7 The Receiver filed Omnibus objections to claims which were approved by the Court on  
8 June 27, 2019. The Receiver also settled disputes with two unsecured creditors, Progresso Ventures  
9 LLC and Pradeep Sindhu, pursuant to stipulations that were approved by the Court.

10 The Receiver is in discussions with Fortuna Funds to try to consensually resolve disputed  
11 issues relating to Fortuna's claim.

12 There may remain a few lingering objections to claims relating to guaranty claims, but  
13 otherwise the claims administration has largely been completed.

### 14 **IV. John Bivona Bankruptcy Proceeding**

15 The former receiver had filed a proof of claim in the bankruptcy case of John Bivona and  
16 had entered into a stipulation with Bivona to extend the deadline to object to Bivona's discharge.  
17 The Receiver has amended the proof of claim to reflect that she is the successor receiver, and she  
18 has also stipulated to further extend the denial of discharge deadline, which is currently extended  
19 through October 28, 2019. In the meantime, the Trustee in the Bivona bankruptcy case recently  
20 filed a complaint objecting to Bivona's discharge under section 727 of the Bankruptcy Code.  
21 Because the bankruptcy trustee has now filed a 727 complaint and is prosecuting denial of  
22 discharge claims against Bivona, the Receiver believes that any additional complaint she might file  
23 will be duplicative and an unnecessary expenditure of receivership estate resources. Accordingly,  
24 the Receiver believes that it is appropriate and most cost-effective for the estate to rely on the  
25 Bivona Trustee's efforts to deny the debtor's discharge and to decline to enter into additional  
26 extensions of the discharge deadline. The Receiver raises this issue for discussion at the status  
27 conference to the extent that any party or the Court disagrees with her intention not to further  
28 extend the deadline.

1 DATED: October 2, 2019

By: /s/ Kathy Bazoian Phelps

Kathy Bazoian Phelps  
Successor Receiver

4 DATED: October 2, 2019

By: /s/ John S. Yun

John S. Yun  
Mark Katz  
Attorneys for Plaintiff Securities and Exchange  
Commission

8 DATED: October 2, 2019

By: /s/ Jonathan K. Levine

Jonathan K. Levine  
Elizabeth Pritker  
Pritzker Levine LLP  
Attorneys for the SRA Funds Investor Group

11 DATED: October 2, 2019

By: /s/ Avi Israeli

Avi Israeli (pro hac vice)  
Holwell Shuster & Goldberg LLP

**ATTESTATION OF E-FILED SIGNATURES**

I, Kathy Bazoian Phelps, am the ECF user whose ID and password are being used to file this Joint Status Report. In compliance with Local Rule 5-1(i)(3), I hereby attest that John S. Yun, Jonathan K. Levine, and Avi Israeli have each concurred in this filing.

Dated: October 3, 2019

/s/ Kathy Bazoian Phelps  
KATHY BAZOIAN PHELPS